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Eschelon Financial Services, LLC d/b/a EMV Payment Systems, LLC and La'Cette Blaylock.
Case 28–CA–146504

August 31, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that Eschelon Financial Services, LLC d/b/a EMV Payment Systems, LLC (the Respondent) has failed to file an answer to the complaint. Upon a charge and amended charge filed on February 17 and April 27, 2015, respectively, by La'Cette Blaylock, the General Counsel issued a complaint on April 30, 2015, against the Respondent alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On June 3, 2015, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. Thereafter, on June 4, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by May 14, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and email dated May 22, 2015, notified the Respondent that unless an answer was received by May 29, 2015, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation, with an office and place of business in Phoenix, Arizona (the Respondent's facility), and has been engaged in business as a merchant services provider.

In conducting its operations during the 12-month period ending February 17, 2015, the Respondent provided services valued in excess of \$50,000 directly to enterprises within the State of Arizona, including Visa, Inc., an enterprise directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

DJ Manley	-	Supervisor
Betsy Anzone	-	Human Resources Manager
Amelia Espinoza	-	Supervisor
David Barton	-	Human Resources Director

About February 2015, the Respondent's employee La'Cette Blaylock engaged in concerted activities with other employees for the purposes of mutual aid and protection by raising with the Respondent and discussing among themselves the Respondent's employee break policies and practices.

Since about July 1, 2014, the Respondent has maintained the following overly broad and discriminatory rules in its 2012 Employee Handbook (Handbook):

(1) At page 22:

Confidential information/Non-Disclosure

All EMV Payment Systems records and information about EMV Payment Systems, its employees, customers, suppliers and vendors are to be kept confidential and divulged only to individuals within the company with both a need to receive and authorization to receive the information. All records and files maintained by the company are confidential and remain the property of the company. No EMV Payment Systems records, files or EMV Payment Systems-related information may be removed from EMV Payment System's premises or disclosed to any outside party without the express permission from EMV Payment Systems. Confi-

dential information regarding EMV Payment Systems includes, but is not limited to, financial records, business, marketing, and strategic plans, Human Resources and payroll records regarding current and former employees, the identity of, contact information for, and any other account information on customers, vendors and suppliers, inventions, programs, trade secrets, formulas, techniques and processes, and any other documents or information regarding the company's operations, procedures or practices. Additionally, the contents of EMV Payment Systems records or information otherwise obtained in regard to business may not be disclosed to anyone, except where required for a business purpose.

Employees must not disclose any confidential information to any unauthorized person inside or outside the company. Employees who are unsure about the confidential nature of specific information must ask their supervisor or human resources for clarification. The company reserves the right to avail itself of all legal or equitable remedies to prevent impermissible use of confidential information or to recover damages incurred as a result of the impermissible use of confidential information. In addition, employees will be subject to appropriate disciplinary action, up to and including termination of employment for revealing information of a confidential nature. Employees may be required to enter into written confidentiality agreements confirming their understanding of the company's confidentiality policies.

The protection of confidential business information and trade secrets is vital to the interests and the success of EMV Payment Systems. Such confidential information includes, but is not limited to, the following examples:

* * * *

labor relations strategies

* * * *

current employee information

* * * *

previous employee information

* * * *

Employees who improperly use or disclose trade secrets or confidential business information will be subject to disciplinary action, up to and including termination of employment and legal action, even if they do not actually benefit from the disclosed information.

(2) At Page 23:

Conflict of Interest

EMV Payment Systems continued success depends upon the undivided loyalty of its employees throughout their employment. To maintain its reputation and the relationships it has developed with outside companies and individuals, EMV Payment Systems requires the following commitments from all of its employees.

Every EMV Payment Systems employee has a legal and ethical responsibility to promote EMV Payment Systems best interests. No employee may engage in any conduct or activity that is inconsistent with EMV Payment Systems best interests or that in any fashion disrupts, undermines, or impairs EMV Payment Systems relationships with any customer or prospective customer or any outside organization, person or entity with which EMV Payment Systems has or proposes to enter into an arrangement, agreement, or contractual relationship of any kind.

EMV Payment Systems requires the complete commitment of all full-time employees. Such employees may not engage in any outside activity or accept work in any outside position that either interferes with their ability to devote their full and best efforts to EMV Payment Systems or raises an actual or potential conflict of interest or the possible appearance of a conflict of interest. Employees who have any questions whatsoever regarding this policy or the potential impact of outside activities on their position with EMV Payment Systems should contact the President of the company before accepting any outside position or engaging in any such activity.

Conflicts of interest breaches can result in immediate termination and loss of future pay to employee along with legal recourse by EMV Payment Systems to reclaim *any* loss revenue or potential future revenue.

(3) At pages 25–26:

Computer, Email and Internet Usage

EMV Payment Systems recognizes that use of the Internet has many benefits for EMV Payment Systems and its employees. The Internet and e-mail make communication more efficient and effective. Therefore, employees are encouraged to use the Internet appropriately. Unacceptable usage of the Internet can

EMV PAYMENT SYSTEMS, LLC

place EMV Payment Systems and others at risk. This policy discusses acceptable usage of the Internet.

The following guidelines have been established for using the Internet and e-mail in an appropriate, ethical and professional manner.

EMV Payment Systems Internet and e-mail access may not be used for transmitting, retrieving or storing of any communications of a defamatory, discriminatory or harassing nature or materials that are obscene or X-rated. No messages with derogatory or inflammatory remarks about an individual's race, age, disability, religion, national origin, physical attributes or sexual preference shall be transmitted. Harassment of any kind is strictly prohibited. Disparaging, abusive, profane, or offensive language; materials that would adversely or negatively reflect upon EMV Payment Systems or be contrary to EMV Payment Systems' best interests; and any illegal activities -- including piracy, cracking, extortion, blackmail, copyright infringement, and unauthorized access to any computers on the Internet or e-mail -- are forbidden.

The following behaviors are examples of actions and activities that are prohibited and can result in disciplinary action:

- Sending or posting confidential material, trade secrets or proprietary information outside of the organization
- Sending or posting messages or material that could damage the organization's image or reputation
- Sending or posting messages that disparage another organization's products or services.

Since about February 10, 2015, the Respondent, by Amelia Espinoza, at the Respondent's facility: threatened its employees with discharge if they engaged in protected concerted activities; issued an unlawful directive to its employees prohibiting them from engaging in protected concerted activities; and enforced an unlawful directive to its employees which prohibited them from engaging in protected concerted activities.

About February 10, 2015, the Respondent discharged Blaylock. The Respondent discharged her because Blaylock raised with the Respondent and discussed with other employees the Respondent's employee break policies

and practices, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent maintained overly broad and discriminatory rules in its 2012 Employee Handbook and issued unlawful directives to its employees prohibiting them from engaging in protected concerted activities, we shall order the Respondent to rescind the unlawful rules and directives and to advise employees in writing that the unlawful rules and directives are no longer being maintained.

Further, having found that the Respondent violated Section 8(a)(1) of the Act by discharging La'Cette Blaylock, we shall order the Respondent to offer her full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Blaylock whole for any loss of earnings and other benefits she may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).¹ In addition, we shall order the Respondent to compensate Blaylock for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social

¹ In the complaint, the General Counsel requests that Blaylock be reimbursed for any out-of-pocket expenses incurred while searching for work as a result of the discrimination against her. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *The H.O.P.E. Program*, 362 NLRB No. 128, slip op. at 2 fn. 1 (2015); *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), *enfd.* 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

Security Administration allocating the backpay award to the appropriate calendar quarters.

Finally, the Respondent shall be required to remove from its files any and all references to the unlawful discharge of Blaylock and to notify Blaylock in writing that this has been done and that the unlawful conduct will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Eschelon Financial Services, LLC d/b/a EMV Payment Systems, LLC, Phoenix, Arizona, its officers, agents, successors, and assigns, shall:

Cease and desist from

(a) Maintaining overly broad and discriminatory Confidential Information/Non-Disclosure, Conflict of Interest, and Computer, Email and Internet Usage rules in its 2012 Employee Handbook.

(b) Threatening its employees with discharge if they engage in protected concerted activities.

(c) Issuing unlawful directives to its employees prohibiting them from engaging in protected concerted activities.

(d) Enforcing unlawful directives to its employees that prohibit them from engaging in protected concerted activities.

(e) Discharging employees because they engage in concerted activities or to discourage employees from engaging in these activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the overly broad and discriminatory Confidential Information/Non-Disclosure, Conflict of Interest, and Computer, Email and Internet Usage rules in its 2012 Employee Handbook, and advise employees in writing that these unlawful rules are no longer being maintained.

(b) Rescind any unlawful directives to its employees that prohibit them from engaging in protected concerted activities, and advise employees in writing that these unlawful rules are no longer being maintained.

(c) Within 14 days from the date of this Order, offer La'Cette Blaylock full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(d) Make La'Cette Blaylock whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(e) Compensate La'Cette Blaylock for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(f) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge of La'Cette Blaylock and, within 3 days thereafter, notify her in writing that this has been done and that its unlawful conduct will not be used against her in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Phoenix, Arizona copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2014.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

EMV PAYMENT SYSTEMS, LLC

Dated, Washington, D.C., August 31, 2015

Mark Gaston Pearce,	Chairman
Philip A. Miscimarra,	Member
Kent Y. Hirozawa,	Member

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain overly broad and discriminatory Confidential Information/Non-Disclosure, Conflict of Interest, and Computer, Email and Internet Usage rules in our 2012 Employee Handbook.

WE WILL NOT threaten you with discharge if you engage in protected concerted activities.

WE WILL NOT issue unlawful directives prohibiting you from engaging in protected concerted activities.

WE WILL NOT enforce unlawful directives against you that prohibit you from engaging in protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against you for engaging in concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind Confidential Information/Non-Disclosure, Conflict of Interest, and Computer, Email and Internet Usage rules in our 2012 Employee Hand-

book, and after the rescission WE WILL advise you in writing that these unlawful rules are no longer being maintained.

WE WILL rescind any unlawful directives to our employees that prohibit you from engaging in protected concerted activities, and after the rescission WE WILL advise you in writing that these unlawful rules are no longer being maintained.

WE WILL, within 14 days from the date of the Board's Order, offer La'Cette Blaylock full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make La'Cette Blaylock whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL compensate La'Cette Blaylock for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharge of La'Cette Blaylock, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that we will not use the discharge against her in any way.

ESCHELON FINANCIAL SERVICES, LLC D/B/A
EMV PAYMENT SYSTEMS, LLC

The Board's decision can be found at www.nlr.gov/case/28-CA-146504 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

